

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES

v.

)

) CR No. 3-260

) CV No. 9-1309

SHERWIN PINNOCK

**MEMORANDUM ORDER**

Before the Court is Defendant's Motion pursuant to 28 U.S.C. § 2255. Defendant filed a Notice of Appeal on August 19, 2009, which, according to our docket, remains pending. Defendant filed the present Motion on September 28, 2009. Absent extraordinary circumstances, not present here, our Court of Appeals has cautioned that a district court should not take action on a habeas petition while an appeal is pending. United States v. Ford, 215 Fed. Appx. 167 (3d Cir. 2007). The Motion (Docket No. 224) is dismissed as premature, without prejudice to Defendant to refile his request following resolution of his appeal.

AND NOW, this 12<sup>th</sup> day of November, 2009, IT IS SO ORDERED.

BY THE COURT:

/s/Donetta W. Ambrose

Donetta W. Ambrose

Judge, U.S. District Court